IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.334 OF 2006

Jagdishprashad M. Joshi — Petitioner
vs.
The Assistant Commissioner of
Income Tax, Central Circle 11, & ors. — Respondents

Mr.F.V.Irani with Mr.Pramod V. Vaidya i/b.Mr.A.K.Jasani
for the petitioner.

Ms.Ponam Bhosale for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 13th March, 2006

P.C.

Heard.

2. Four times we indicated to the learned counsel for the petitioner that as the impugned order does not meet the requirement of law because the Assessing Officer has not dealt with the objections raised by the petitioner in response to the notice under Section 148 of the Income Tax Act, 1961, the matter has to be remitted to him, the learned counsel kept on insisting that we must quash the notice under section 148 here and now. We fail to understand the insistence of the learned counsel. This is a writ petition under Article 226 of the Constitution of India and if this Court finds that the assessing officer has not properly followed the law laid down by the Apex Court by not disposing of the

petitioner's objections by speaking order, naturally the matter must go back to him for reconsideration.

3. The petitioner was served with the notice under Section 148 of the Income Tax Act, 1961 intimating to him that his income for the Assessment Year 1998-1999 chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act. The reasons that led to the forming of such opinion were furnished and in response thereto the petitioner filed his objections. Inter alia the objection was raised that the sales made to the two parties viz. M/s.Jaywant Industries Limited and M/s.Jaywant Products Limited amounting to Rs.10.25 crores has already been assessed during the course of two block assessment orders passed on 31st March, 2004 and 30th May, 2004 respectively.

The objections filed by the petitioner read thus:

> "1.2 Firstly, the very basic requirement u/s.147 is that there should be reason to believe that any income chargeable to tax has escaped assessment. The sales made to the said parties have already been assessed during the course of two block assessments (covering these sales) passed on 31.03.2004 and 30.05.2004. These sales and profit therefrom have not only been assessed and taxed but also the said tax demand was paid in full, though under appeal. So your good selves have erred while recording the reasons stating that he (so called bogus) sales to these two parties and profit therefrom has escaped assessment.
>
> 1.3 Secondly, regular assessment for A.Y. 1988-99 was completed by your good selves vide your order dt.30.03.2001

u/s.143(3) r.w.s. 147 of the I.T.Act, 1961. The sales to the above mentioned two parties were duly disclosed in the final accounts & books of accounts produced before your selves and details of customers with addresses, value of sales affected including to these two parties filed with your selves during the course of assessment for the said year. So now, it is only change of opinion and no reason to believe that income has escaped assessment due to failure on part of the assessee to disclose fully and truly all material facts.

2. It is legally not permissible [per Explanation to subsection (2) of Section 158BA] to assess an income, which has already been assessed during block assessment, again in regular assessment. Your reasons provided also refer to search conducted. Two block assessments (which included A.Y. 1998-99) had been completed (first on 31-03-2004 & second on 30-15-2004) had been completed (first on 31.03.2005. The same cannot be again assessed in regular assessment u/s.147 r.w.s. 148 reasons for which recorded on 28-03-2005. Therefore the said notice u/s.148 dt.28.03.05 is bad in law and hence may be cancelled/dropped."

4. The assessing officer rejected the objections by observing that in view of the findings in block assessment proceedings of the wrong claim under Section 80-IA with respect to sales made to M/s.Jaywant Products Limited and M/s.Jaywant Industries Limited, the notice given to the petition under Section 148 cannot be cancelled.

5. In GKN Driveshafts (India) Ltd. v. Income Tax Officer & ors., **259 (2003) ITR 19,** the Supreme Court held that upon receipt of the objections to the notice

under Section 148 of the Income Tax Act, the assessing officer shall dispose of the objections by a speaking order before proceeding with the assessment of the concerned year. The order dated 24th January, 2006 is non-speaking order and does not meet the requirement of law as laid down by the Supreme Court in the case of GKN Driveshafts (India) Limited. The assessing officer was obliged to pass a speaking order dealing with the objections raised by the petitioner in response to the notice under Section 148. We do not agree with the contention of the learned counsel for the petitioner that we must quash the notice under Section 148 of the Income Tax Act issued to the petitioner. That stage has not arisen because the assessing officer has not passed speaking order dealing with the objections raised by the petitioner. However, the order dated 24th January, 2006 passed by the assessing officer cannot stand and has to be set aside being non-speaking order and the matter has to be reconsidered by the petitioner.

6. We, accordingly, dispose of this writ petition by the following order:

(i) The order dated 24th January, 2006 passed by the Assistant Commissioner of Income Tax, Central Circle 11, Mumbai is quashed and set aside.

(ii) The Assistant Commissioner of Income Tax, Central Circle 11, Mumbai is directed to re-consider the petitioner's objections dated 6th January, 2006 in accordance with the law and pass speaking order disposing of such objections.

(ii) Until objections dated 6th January, 2006 filed by the petitioner are disposed of by the Assistant Commissioner of Income Tax, Central Circle 11, Mumbai afresh and for a period of four weeks thereafter from the date of communication of such order to the petitioner, the assessing officer shall not pass the fresh order of re-assessment pursuant to the notice dated 28th March, 2005.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)